Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer Protection in the Broadband Era	)	WC Docket No. 05-271
	)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits its comments in response to the Federal Communications Commission's (FCC's or Commission's) Notice of Proposed Rulemaking (NPRM) in the above-referenced docket.[2] The Commission seeks comment on whether it should impose any non-economic, consumer protection regulations on broadband Internet access service providers. USTelecom urges the Commission to refrain from imposing any of the regulations identified in the NPRM – regulations governing privacy, slamming, truth in billing, network outages, discontinuance of service, and rate averaging. These types of regulations are not needed because either no specific consumer harms have yet been identified that *may* support a justification for imposing regulation on what the Commission has found to be a competitive broadband service market; or in a competitive market of this type, adequate consumer protection is either inherently provided or rendered meaningless. In short, until and unless there is a clear need to provide this type of consumer protection through regulation, the market should be permitted to function as it was intended to function.

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[1] USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms.

[2] *Consumer Protection in the Broadband Era*, Notice of Proposed Rulemaking, WC Docket No. 05-271, FCC 05-150 (rel. Sept. 23, 2005) (NPRM).

DISCUSSION

I. The market for broadband services market is highly competitive.

In 2002 when the Commission initiated its rulemaking to examine the appropriate legal and policy framework for wireline broadband access to the Internet, USTelecom filed comments emphasizing that consumers have choices for mass market broadband services.[3] USTelecom noted then the increase from 18 percent of zip codes that had two or more high-speed service providers in 1999 to about 41 percent of zip codes that had at least two high-speed service providers in 2001.[4] Taking into consideration the amount of competition among broadband Internet access service providers at the time of its Report and Order in the wireline broadband proceeding,[5] specifically that the "broadband Internet access market today is characterized by several emerging platforms and providers, both intermodal and intramodal, in most areas of the

[3] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Comments of the United States Telecom Association, CC Docket Nos. 02-33, 95-20, and 98-10 at 8-9 (filed May 3, 2002).

[4] *See id*. at 8, *citing Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, CC Docket No. 98-146, FCC 02-33 (rel. Feb. 6, 2002).

[5] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 01-337, 95-20, 98-10 and WC Docket Nos. 04-242 and 05-271, FCC 05-150 (rel. Sept. 23, 2005) (Wireline Broadband Order).

country," the Commission applied a "lighter regulatory touch" to wireline broadband Internet access services.[6]

In addition to the Commission's findings in the Wireline Broadband Order, the Commission's most recent report to Congress on the availability of advanced telecommunications capability stated that by the end of 2003 there were 46.3 percent of zip codes with four or more high-speed service providers as well as only 6.8 percent of zip codes that had no high-speed service providers.[7] Clearly there has been a significant increase in the number of high-speed service providers competing to provide service to customers, but it is also important to note the Commission also focused on the diversity in the types of broadband service providers – the Commission identified seven different types of technologies that are currently used to offer high-speed services: cable, DSL, fiber, unlicensed wireless, licensed wireless, power lines, and satellite.[8]

Competition to provide broadband services is here and growing every year, and the lack of demonstrated consumer driven problems within these markets indicates that the competitive landscape obviates the need for additional regulation. The competitive nature of this industry is an important foundation for evaluating the need for future consumer protection regulations, and such regulation should not be contemplated unless and until the need arises.

[6] *Id.*, ¶ 3.

[7] "Availability of Advanced Telecommunications Capability in the United States: Fourth Report to Congress," Federal Communications Commission, GN Docket No. 04-54, FCC 04-208 (rel. Sept. 9, 2004) (Fourth Report).

[8] Fourth Report at 14-23.

II. There is no need to impose consumer protection regulations on a competitive industry; those protections are inherently provided by competition.

Without a doubt, consumer protection must be a concern for the Commission. That said, however, protection need not always come in the form of regulation. Broadband service providers do not want their customers to suffer any of the potential harms addressed in the NPRM. If a broadband customer has his privacy violated, has his service changed without authorization,[9] receives a misleading or deceptive bill, has his service disrupted by a network outage, has his service disconnected, or is charged what he thinks is too much for his service, that customer will seek service from a competitive provider and he will do that because he has the ability to do so. Competitors are ready and waiting, in fact actively pursuing opportunities, to win over customers with promises of better service and better price. This competition is an effective substitute for most, if not all, regulation – both rate regulation and consumer protection regulation. Indeed, as USTelecom has argued many times before, competition usually replaces the need for regulation.

Setting aside the market economy reason for refraining from imposing the consumer protection regulations addressed in the NPRM, and potentially other consumer protection regulations, there are other practical reasons to do so as well. Notably, there is no significant evidence, if any at all, that consumers are having problems with their broadband services that would warrant imposition of regulations protecting them. Again, broadband providers that are interested in keeping their customers – and arguably they all are – have taken steps to protect their customers, and continue to upgrade those protections for their customers, against concerns such as those raised in the NPRM. For example, with regard to privacy, many carriers have

[9] USTelecom is not conceding that it is even technically possible to slam a broadband customer.

well-established privacy policies and their own privacy protection programs to prevent misuse or release of customer proprietary information. Likewise, with regard to billing concerns, many wireline broadband service providers that also provide regulated telecommunications services use a bundled bill that contains both the charges for the broadband services and the charges for the other regulated services, the latter of which are already subject to truth in billing rules. Additionally, most broadband service providers have built their networks with redundancy and self-healing properties, virtually eliminating the possibility that an outage will occur on their network.

Even if consumers of broadband services were experiencing some of the types of problems addressed in the NPRM, there are many other sources of protection applicable to those problems to which they can turn. Applying an additional layer of protection through additional FCC regulation is simply not necessary. Broadband consumers whose privacy is violated can look to the Federal Trade Commission, state consumer advocates, and state attorneys general to bring a complaint against the violating provider. As alluded to above, to the extent a broadband provider offers the broadband service bundled with regulated telecommunications services and bills the two types of services together, the billed broadband services essentially come under the Commission's existing truth-in-billing rules.

USTelecom believes it is unlikely, if not impossible, that broadband consumers will experience a problem with slamming of their broadband service. Slamming a broadband customer who has service provided over one type of technology over to service using a different type of technology (or intermodal slamming) is virtually impossible due to the need to switch networks and equipment. Intramodal slamming may be technically possible, but it is difficult to

do, almost to the point of being impossible, because of the many software related changes that must be implemented.

Protections for other concerns raised in the NPRM – specifically network outages, section 214 discontinuances, and section 254(g) rate averaging – are simply not needed because there are competitive alternatives for broadband service. There is no need to require broadband service providers to report network outages. As noted above, it is unlikely that most broadband providers will experience network outages that will impact customers, but if such outages do occur and a customer is not happy about the number of outages or the duration of any outage, the customer can easily switch its service to another provider. There is no need to require broadband service providers to file for approval of discontinuance of service because there is a competitive broadband market where consumers have options and they are able to easily acquire broadband service from another provider.[10] There is no need to impose section 254(g) rate averaging

[10] When the Commission determined in the Wireline Broadband Order that wireline broadband Internet service providers could offer their broadband service on a private carriage basis under Title I, the Commission also specified that broadband providers changing their classification of broadband services could do so without having to comply with all of the requirements of section 214(a). Specifically, the Commission granted them a blanket certification for section 214, but subjected them to certain conditions for customer and Commission notification. *See* Wireline Broadband Order, ¶¶ 100-101.

With regard to providers that elected to continue offering their broadband services on a telecommunications basis, the Commission specified that they could do so on a permissive detariffing basis, but did not state that any section 214 requirements applied to such detariffing. *See id.*, ¶ 90. Indeed, it does not make any sense to apply the section 214 discontinuance requirements to broadband providers that continue offering broadband service on a telecommunications basis because they have not in fact discontinued the service. Rather, they are still offering the broadband service on a common carriage basis under Title II, but merely on a detariffed basis. In addition, requiring providers to comply with section 214 discontinuance requirements when they are merely detariffing their broadband service would be confusing to the states because the states would receive notices from broadband providers that are couched as notices of discontinuance, but again the provider would not actually be discontinuing service. Finally, requiring broadband providers that are merely detariffing their Title II service to comply with section 214 discontinuance requirements would be unduly burdensome on small carriers.

requirements on broadband providers. Rate averaging is merely another form of rate regulation and as such is wholly inconsistent with Title I treatment of a service.

In the event the competitive market and the broadband providers themselves do not continue to prevent the concerns raised in the NPRM and if there is a need in the future to impose some form of consumer protection to address any significant issues that may develop, the Commission can certainly address them by regulation then. Until such a need arises, the Commission should provide the market with the opportunity to do what it is intended to do.

III. If consumer protection regulations are adopted, they should apply equally to all broadband services and they should be federal regulations, not state regulations.

None of the consumer protection regulations raised for consideration in the NPRM should be applied to any broadband provider. However, in the event the Commission determines that any of the regulations addressed in the NPRM, or other consumer protection regulations not specifically identified in the NPRM, are necessary, then they should be imposed equally on all broadband service providers. To do otherwise would provide a competitive advantage to those providers not saddled with the administrative and cost burdens of complying with regulations. In addition, if any consumer protection regulations are imposed on broadband services, they should only be imposed by the Commission, not state commissions. The Commission has already found that Internet access is an interstate service.[11] To ensure that broadband providers are not forced to comply with potentially 50 different sets of consumer protection regulations, the Commission should pre-empt state regulation of broadband services.

The Commission should make clear that section 214 discontinuance requirements do not apply to broadband providers that continue offering service on a common carriage, but detariffed, basis.

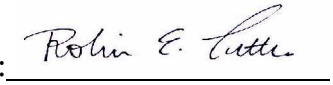
[11] *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, 13 FCC Rcd 22466, ¶ 1 (1998).

CONCLUSION

For the foregoing reasons, the Commission should refrain from imposing any of the consumer protection regulations contemplated in the NPRM and it should pre-empt the states' ability to separately regulate broadband Internet access services.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on January 17, 2006, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:

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